

DREIER STEIN KAHAN
BROWNE WOODS GEORGE LLP
Stanton L. Stein (No. 45997) (admission pending)
lstein@dreierstein.com
Jonathan E. Stern (No. 222192)
jstern@dreierstein.com
The Water Garden
1620 26th Street
Sixth Floor, North Tower
Santa Monica, CA 90404
Telephone: 310.828.9050
Facsimile: 310.828.9101

Attorneys for Defendants
KIM MOSES and HERITAGE AUCTION, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH C. MONTANA, JR.,

Plaintiff,

vs.

KIM MOSES, HERITAGE AUCTION,
INC., and DOES 1 through 25 inclusive,

Defendants.

CASE NO. C08 02324 BZ

**NOTICE OF PENDENCY OF OTHER
ACTION OR PROCEEDING**

(Pursuant to Civil L.R. 3-13)

Pursuant to Local Rule 3-13, defendant Kim Moses and Heritage Auction, Inc. (collectively, "Defendants") hereby file this Notice of Pendency of Other Action or Proceeding based on the lawsuit titled *Kim Moses v. Joseph C. Montana, Jr.*, Case No. CIVMSC 08-01705, currently pending before Hon. Barbara Zuniga in the Superior Court of California for the County of Contra Costa (the "State Court Action").

The State Action and the action pending before this Court involve the same property. The State Court Action seeks declaratory relief and a declaration from the court that Moses is the rightful owner of the disputed property and that Joseph C. Montana, Jr. ("Montana") does not have any ownership interest in that property.

Since the filing of the present action, Defendants have moved pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for an order dismissing this action on various

grounds, including on the grounds that the Court lacks subject matter jurisdiction to adjudicate this dispute since no complete diversity exists between Montana and Defendants.¹ The hearing on the motion is presently scheduled for August 13, 2008. Dismissal of this action is appropriate in order to avoid conflicts, conserve resources and promote an efficient determination of the claims between the parties since, among other reasons, the pending action is not properly before this Court.

DATED: July 9, 2008

DREIER STEIN KAHAN BROWNE WOODS GEORGE
LLP

By 

JONATHAN E. STERN
Attorneys for Defendants
KIM MOSES and HERITAGE AUCTION, INC.

DREIER STEIN KAHAN
BROWNE WOODS GEORGE LLP

¹ Defendants' motion also seeks, in the alternative, that the third and fourth causes of action for common law copyright violation and conversion, respectively, be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Dreier Stein Kahan Browne Woods George LLP, The Water Garden, 1620 26th Street, 6th Floor, North Tower, Santa Monica, California 90404. On July 9, 2008, I served a true copy of the within documents:

NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California, addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope, with the overnight delivery charge prepaid, addressed as set forth below, and deposited in a box or facility regularly maintained by the overnight delivery service carrier, _____.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Robert L. Mezzetti, II, Esq.
Mezzetti Law Firm, Inc.
31 East Jullan Street
San Jose, California 95112
Tel. No.: (408) 279-8400
Fax No.: (408) 279-8448
Email: rob@mezzettilaw.com

Attorneys for Plaintiff
JOSEPH C. MONTANA, JR.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 9, 2008, at Santa Monica, California.



Maria G. Garcia